

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

DEXTER WELLS

PLAINTIFF

v.

No. 4:21CV141-DAS

NATHAN BURL CAIN, ET AL.

DEFENDANTS

MEMORANDUM OPINION

This matter comes before the court on the *pro se* prisoner complaint of Dexter Wells, who challenges the conditions of his confinement under 42 U.S.C. § 1983. For the purposes of the Prison Litigation Reform Act, the court notes that the plaintiff was incarcerated when he filed this suit. Mr. Wells alleges that he was transferred from Mississippi Department of Corrections (“MDOC”) custody to a Super Max facility in Virginia for no reason – and that he lost his personal property because of the actions of prison officials during the move. For the reasons set forth below, the instant case will be dismissed for failure to state a claim upon which relief could be granted.

Allegations

The plaintiff, Dexter Wells, was in inmate in the custody of MDOC and housed at the South Mississippi Correctional Institution (“SMCI”). Though his good behavior in prison would normally have made him eligible for minimum security housing, he placed in medium security custody based upon his sentence of life. Despite his placement in medium security custody, he enjoyed many of the “rights, privileges, and work assignments” normally afforded inmates in minimum security housing. On July 24, 2020, he was placed in lockdown based upon a prison Rule Violation Report linking him to a gang-related inmate death. He was then transported to the Tallahatchie County Correctional Facility (“TCCF”) in Tutwiler, Mississippi, without his personal property or commissary items. The

Rule Violation Report was ultimately dismissed; however, on August 11, 2020, Mr. Wells was transferred to a Super Max facility in Virginia. He was later transferred to another Virginia Super Max facility, where he remains. He seeks a transfer back to SMCI, restoration of his custody classification, rights, privileges, and job assignment, return of his personal property, legal fees, and court costs.

No Violation of Due Process

Under the ruling in *Sandin v. Conner*, 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995), the plaintiff has not set forth a valid claim for violation of the Due Process Clause or any other constitutional protection. Though “[s]tates may under certain circumstances create liberty interests which are protected by the Due Process Clause, . . . these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force . . . nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.* 115 S. Ct. at 2300 (citations omitted). In *Sandin*, the discipline administered the prisoner was confinement in isolation. This discipline fell “within the expected parameters of the sentence imposed by a court of law,” *id.* at 2301, and “did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest.” *Id.* Therefore, neither the Due Process Clause itself nor State law or regulations gave rise to a liberty interest providing the procedural protections set forth in *Wolff v. McDonnell*, 418 U.S. 539, 41 L. Ed. 2d 935 (1974). *See also Malchi v. Thaler*, 211 F.3d 953, 958 (5th Cir. 2000) (holding prisoner’s thirty-day loss of commissary privileges and cell restriction due to disciplinary action failed to give rise to due process claim).

In the present case, the plaintiff was transferred to a prison with far higher security protocols than his previous housing. This transfer clearly fell “within the expected parameters of the sentence imposed by a court of law” and “did not present the type of atypical, significant deprivation in which a

State might conceivably create a liberty interest.” *Sandin*, 115 S.Ct. at 2301. As such, the plaintiff’s allegations regarding violation of his right to due process are without merit, and his allegations regarding transfer will be dismissed for failure to state a claim upon which relief could be granted.

Taking of Property Without Due Process of Law

Similarly, Mr. Wells’ allegation regarding the taking of his property fails to state a valid constitutional claim. The random and unauthorized deprivation of a prisoner’s property by a state actor does not violate the prisoner’s due process rights if the state provides an adequate post-deprivation remedy. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984); *Parratt v. Taylor*, 451 U.S. 527, 541-44 (1981), *overruled in part by Daniels v. Williams*, 474 U.S. 327, 330-31 (1986). This rule, the Parratt/Hudson doctrine, provides “that no constitutional claim may be asserted by a plaintiff who was deprived of his liberty or property by negligent or intentional conduct of public officials, unless the state procedures under which those officials acted are unconstitutional or state law fails to afford an adequate post-deprivation remedy for their conduct.” *Martin v. Dallas County, Tex.*, 822 F.2d 553, 555 (5th Cir. 1987); *see also Hudson*, 486 U.S. at 533, *Daniels*, 474 U.S. at 330-31; *White v. Epps*, 411 Fed.Appx. 731 (5th Cir. 2011). Thus, the initial question before the court as to the plaintiff’s claim regarding the taking of his property is whether Mississippi law affords him an adequate post-deprivation remedy for his loss.

In most circumstances, suits against the Mississippi government would be controlled by the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-9 (“MTCA”), which became effective on April 1, 1993. As to suits filed by prisoners, the MTCA states:

(1) A governmental entity and its employees acting and within the course scope of their employment or duties shall not be liable for any claim:

...

(m) Of any claimant who at the time the claim arises is an inmate of any detention

center, jail, workhouse, penal farm, penitentiary or other such institution, regardless of whether such claimant is or is not an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution when the claim is filed.

Miss. Code Ann. § 11-46-9(1)(m). At first blush, this statute would seem to foreclose any remedies the plaintiff may have under state law. However, the plaintiff's remedy for the taking of property arises directly from the Constitution of the State of Mississippi, which cannot be circumvented through a state statute. *Pickering v. Langston Law Firm, P.A.*, 88 So.3d 1269 (Miss. 2012). The unlawful taking of an inmate's property can violate Article 3, Section 17 of the Constitution of the State of Mississippi. *Bishop v. Reagans*, 2012 WL 1804623 (S.D. Miss.), citing *Johnson v. King*, 85 So.3d 307 (Miss.App.,2012). Article 3, Section 17 of the Mississippi Constitution reads:

Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof, in a manner to be prescribed by law; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use by the public shall be a judicial question, and, as such, determined without regard to legislative assertion that the use is public.

The circumstances in *Johnson* are legally indistinguishable from those in the instant case. The prison officials in that case confiscated *Johnson's* drinking mug and disposed of it. *Johnson v. King*, 85 So.3d 307, 311-312 (Miss. App. 2012). *Johnson* had purchased the mug from the canteen with his own money. *Id.* The mug as purchased was not considered contraband, and *Johnson* had not modified the mug in such a way to turn it into contraband. *Id.* The Mississippi Court of Appeals held that, under these circumstances, the taking of *Johnson's* mug violated the Mississippi Constitution and that prison officials had to either replace the mug or compensate *Johnson* for the fair value of the mug. *Id.* Those facts mirror the facts in the present case. As such, the plaintiff in this case has an adequate remedy under state law, and his claims for the taking of his property without due process of law must be dismissed.

Conclusion

For the reasons set forth above, all of the plaintiff's allegations must be dismissed for failure to state a claim upon which relief could be granted. A final judgment consistent with this memorandum opinion will issue today.

SO ORDERED, this, the 23rd day of November, 2021.

/s/ David A. Sanders

DAVID A. SANDERS

UNITED STATES MAGISTRATE JUDGE